

LAND REGISTRATION AS A LEGAL CONSTRUCTION OF LAW IN ORDER TO FACING ASEAN ECONOMIC COMMUNITIES

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Abstract

This article discusses the land registration as a legal construction of law in order to facing Asean economic communities. The problems in this study are: (1) What is the Government's policy in solving the problem of land registration in Indonesia so that it can provide certainty for the business world in increasing domestic investment in welcoming the ASEAN Economic Community? (2) How is the implementation of state policies in land registration to provide an investment climate with legal certainty related to land issues? This research uses a normative juridical approach, by analyzing and interpreting theoretical matters concerning principles, conceptions, theories and legal norms relating to land registration. The results of the study show that the government needs to create legal certainty regarding land issues so that it can provide investment excitement for the business world in increasing domestic investment in the atmosphere of the ASEAN Economic Community. The guarantee of legal certainty to be realized in this land registration includes certainty of the status of land rights, certainty of legal subjects, and certainty of legal objects.

Keywords: Legal Certainty, Land Registration

A. INTRODUCTION

In the era of globalization, the entry of investment in a developing country, especially Indonesia, is one of the most significant roles in spurring economic development. In developing countries the need for large development capital has always been a major problem in economic development, so among developing countries the concern for investors is not only rich natural resources, but the most important is how the laws in that country can provide legal certainty and business certainty (Kandiawan, 2008, p. 1).

As we know that the state also has a function to bear the negative effects of natural exploitation. Of course, it is quite difficult for Indonesia to segregate interests with other countries that have their own national interests. Moreover, many foreign industrial countries have ambitions to secure land supply in anticipation of the long-term post of the 2008 Global crisis. The measure is the extent to which post-crisis 2008 countries are able to overcome the problem of scarcity of land which is increasingly scarce.

In other words, capitalism can be a way of life because there is a political system that supports it. We can see this view in a Marxist perspective on the state. Marxists are skeptical of the role of state sovereignty in creating a better social order. In essence the state is a tool for the bourgeoisie legally to exploit the proletariat. The state will always maintain the structure of society hierarchically. The synthesis will become a new thesis that moves in the process of necessity continuously.

The term feudalism actually comes from ancient French which reads *fehuôd*, *feud*, *feud* which means loans, especially land borrowed for a political purpose. Opponents of the word

are all or their own (Baudrillard, 1994, p. 234). The land loans like that arise on a large scale in Western European countries which are overwhelmed by the decentralization of the French kingdom after the Great Karen. The French Empire was born and developed after the sinking of the century Roman Empire 17. Previously in Roman law there was an awareness of the absolute private property of someone who was immense and guaranteed by legal provisions.

In the Middle Ages there was almost no circulation of money so that it was impossible to hire a government employee body or a permanent army, including holding a centralized state administration. To organize people's security and prevent chaos, several forms of tribal organization from the time before Roman rule were revived. The feudal structure on Java is very different from feudal structures in medieval Europe. So the land in a tribal organization belongs to the collective or very strong, not the absolute property of a landlord (Schrieke, 1955).

From different historical origins, the model of military pressure to control potential and profitable lands has been abandoned. Modernization that occurred began to shift the militaristic model of colonialization, especially after Indonesian independence from Japan on August 17, 1945. The Multi National Corporation (MNC) model by using economic and investment motivation became a new strategy used to acquire land in Indonesia, while controlling the type of production. Technology in agriculture began to develop rapidly, the transition of Indonesia as a country supplying agricultural products was transferred to developed countries that have qualified agricultural technology. Now the potential for other types of land, such as coal in Kalimantan, mining in Sulawesi and Papua, even Java, which was once a repentance from agriculture in Indonesia, is now being eroded by oil and gas mines.

The country slowly chose industry as an instrument to develop its economy and replace the agrarian. However, the distortion that occurs in many developing countries that choose industrial instruments is that the welfare of their workers is not considered. With the strengthening of the flow of economic globalization which has led to interdependence and integration in the fields of finance, production and trade has had an impact on the management of the Indonesian economy.

This impact was felt even more after the flow of economic globalization with the development of the principle of trade liberalization (trade liberalization) which has been pursued jointly by countries in the world in the form of economic cooperation, such as North American Free Trade (NAFTA), Single European Market (SEM), European Free Trade Agreement (EFTA), Australian-New Zealand Closer Economic Relations and Trade Agreement (ANCERTA), Asean Free Trade Area (AFTA), Asia Pacific Economic Cooperation (APEC), and World Trade Organization (WTO) (Kandiawan, 2008, p. 2). Furthermore, the main concern at this time is how the Indonesian Government oversees various deregulations and legal instruments, for the success of the implementation of the Asean Economic Community (MEA) in 2016 (Loyani, 2015, p. 2-3).

Recovery in the world economy is expected to continue in 2015, the world economic growth is expected to reach 4.0%. Higher compared to 2014 growth which is estimated to reach 3.4%. Positive developments also occur in developed countries with growth increasing from 1.8% in 2014 to 2.2% in 2015.

The Asean Economic Community (MEA) is a form of integration of ASEAN communities where there is free trade among members of ASEAN countries that are mutually agreed

upon by ASEAN countries, and to transform ASEAN into a stable, prosperous and highly competitive region. The ASEAN Economic Community (AEC) or the ASEAN Economic Community (MEA) is one of the three pillars that make up ASEAN. Each pillar including the MEA has a blueprint and together with the Initiative Framework for ASEAN Integration (IAI) and the Phase II IAI Work Plan, they plan the ASEAN Community (2009-2015), the process towards MEA:

1. The leaders of ASEAN in December 1997 through a conference held in Kuala Lumpur have decided to make changes to ASEAN in order to become a stable, prosperous, and highly competitive region with an equal level of economic development, and reduce poverty and social inequality -economics (ASEAN Vision 2020).
2. At a conference held in Bali in October 2003, ASEAN declared that the ASEAN Economic Community would be the destination of the Southeast Asia region in terms of economic integration (Bali Concord II) by 2020. And as an addition and support for the MEA, the ASEAN Security Community and Community Socio-Cultural ASEAN is the two pillars that capture the picture of the ASEAN community in the future. The three pillars are expected to go hand in hand in establishing the ASEAN Community by 2020.
3. After that, the ASEAN Economic Ministers Meeting was held in 2006 in Kuala Lumpur and approved the development of "an interlinked blueprint or plan to accelerate the development of the MEA by identifying the uniqueness and elements of the MEA starting from 2015 that are in line with Bali Concord II with clear objectives and chronology for implementing various types of actions, as well as flexibility in terms of adjusting the interests of all ASEAN Member States.

At the conference in January 2007, ASEAN chairmen expressed a strong promise to accelerate the implementation of the ASEAN Community in 2015 as stated in ASEAN Vision 2020 and ASEAN Concord II, and the Cebu Declaration was signed in accelerating the implementation of the ASEAN Community in 2015 In general, it was agreed to immediately implement the MEA in 2015 and turn ASEAN into a region with a free movement in terms of goods, services, investment, reliable labor, and freer flow of capital ("Konsep MEA : Pengertian, Karakteristik dan Keuntungan | Gurupkn.com," n.d.).

Based on these matters and taken into consideration, the importance of trade out and the need for the ASEAN Community to continue to look broadly, the MEA is expected to become a merger of economic activities in the Southeast Asian region in 2015 by bringing characteristics, namely:

1. Single market and single production center.
2. Areas with high economic competition.
3. Regions with equal economic development.
4. Areas that are truly integrated towards global economic competition ("Konsep MEA : Pengertian, Karakteristik dan Keuntungan | Gurupkn.com," n.d.).

These characteristics are interrelated and reinforce each other. Accompanying the other elements of each characteristic in a planning plan will certainly ensure consistency and coherence over all these elements as well as the implementation and proper coordination between relevant stakeholders. This is where the law is a very important factor in relation to the legal protection provided by a country for business activities in Indonesia. As revealed

by Erman Rajagukguk, that the main factor for the law to be able to play a role in economic development for the business world is whether the law is able to create "stability", "predictability" and "fairness". Included in the stability function is the legal potential to balance and provide a place for competing interests.

Through a legal system and legal regulations that can provide protection, predictability, fairness and efficiency will be created for investors to invest in the framework of conducting business activities in Indonesia. In reality, the issue of legal certainty in land ownership is still far from the expectations of the business community, because land conflict is a chronic and classic issue and takes place over an annual period of even decades and is always everywhere. Land disputes and conflicts are forms of problems that are complex and multidimensional (Sumarto, 2012).

Macro causes of land cases are very varied, among others, land prices are increasing rapidly. The condition of the people who are increasingly aware and concerned about their interests and rights. The climate of openness outlined by the government. In essence, land cases constitute a conflict of interest in the land sector between who and who as a concrete example between individuals and individuals; individuals with legal entities; legal entity with a legal entity and others (Ningrum, 2014, p. 219)

Thus, this can affect the climate of the business world in Indonesia, because land is one source of capital in carrying out economic activities. Procedure for land registration is very important, this is because this factor is a supporter of the implementation of sustainable development, and the development carried out is a conscious effort made by the community to achieve a better life. Today's development process will always come into contact with the environment in this case is the use of the land itself, which can bring up problems that are very complex in nature, such as in land registration procedures, as a guarantee of legal certainty, to land owned by communities from the state (through the National Land Agency).

As is known before the enactment of the UUPA, it applies simultaneously two instruments of land law in Indonesia (dualism). One based on customary law is called customary land law and the other comes from western law called Western land law. With the enactment of national agrarian law (UUPA), the land with western rights and lands with customary rights must be found in the UUPA. To be able to enter into the system of the UUPA resolved through conversion institutions (Muljono, 2016, p, 2)

Article 33 of the 1945 Constitution becomes the constitutional basis of the UUPA with Land Reform as the main agenda. Article 33 paragraph (3) of the 1945 Constitution contains a very basic constitutional mandate, namely that the use and use of land and all-natural wealth must be able to bring prosperity and prosperity to the maximum possible for all the people of Indonesia. This also means that every land right and other agrarian resources are demanded certainty regarding the subject, object, and implementation of the rights of their rights. Thus, the vision, spirit and mission of UUPA 1960 as derivative products of Article 33 of the 1945 Constitution are very clearly oriented towards the realization of the Unitary Republic of Indonesia (NKRI).

As a legal state, the concept of the state of Pancasila law becomes the basis of the concept and basis of legal policy for legal protection strategies for holders of land rights and access to natural resources. The rule of law theory is one of the consequences of choosing a state principle based on law as implied in the soul or philosophy of the Indonesian Nation (the Fifth

Precept of Pancasila) and the 1945 Constitution concerning the purpose of the Indonesian legal state.

From the facts, the writer determines the formulation of the problem to be discussed in this journal, namely:

1. What is the Government's policy in resolving the problem of land registration in Indonesia so that it can provide legal certainty for the business world in increasing domestic investment in welcoming the ASEAN Economic Community?
2. How is the implementation of state policies in land registration to provide an investment climate with legal certainty related to land issues?

B. METHOD

The method used in the research is the normative juridical approach by examining and interpreting theoretical matters concerning principles, conceptions, doctrines and legal norms relating to land registration. The research specifications in this study are descriptive analytical, namely describing, analyzing, and concluding problems that are the object of research, namely land registration as a form of legal certainty as evidence of land ownership rights associated with Article 19 Number 5 of 1960 concerning Basic Provisions on Agrarian Principles.

The legal material reviewed and analyzed in this study uses secondary data, including primary legal material consisting of legislation, official records or minutes in the formation of legislation relating to the issues discussed, and secondary legal material includes books, legal journals, papers, magazines, and newspapers.

To review and collect legal materials, namely using documentary studies. Documentary study is a study that examines various documents, both those relating to legislation and existing documents.

The technical analysis used is a qualitative normative analysis method. This qualitative normative method is based on primary legal material as a positive law, then analyzed qualitatively, which is a juridical analysis.

C. RESULTS AND DISCUSSION

1. Government Policy in Resolving Problems with Land Registration in Indonesia So That It Can Provide Legal Certainty for Businesses in Increasing Investment in The Country to Meet the ASEAN Economic Community

Land is an important aspect of human life. all human activities cannot be separated from the existence of land, because land is a place for humans to live and continue their lives. as human nature requires land as a place of activity and livelihood, the relationship between humans and land cannot be separated. so closely that it creates a stronger, social, emotional and spiritual relationship.

There is a Javanese proverb that says how emotionally the relationship between the land and humans inhabits it, namely "*sedhumuk bathuk, senyari bumi dibelani nganti tumekaning pasti*" even though the area of the forehead or the size of a finger will be defended until the last drop.

Humans build buildings on land to be used as a place to live or work. Today's land needs are increasing in line with increasing population and increasing other land-related needs. The use of land for public purposes is very important, so that people and legal entities demand a guarantee of legal certainty over the land.

Land registration procedures are very important, this is because this factor is a supporter of the implementation of sustainable development and the development carried out is a conscious effort made by the community to achieve a better life. Today's development process will always come into contact with the environment in this case is the use of the land itself, which can bring up problems that are very complex in nature, such as in land registration procedures, as a guarantee of legal certainty, to land owned by communities from the state (through the National Land Agency).

Land registration comes from the word Cadastre (Dutch Cadaster), a technical term for a record, showing the area, value and ownership (or other basis of rights) for a plot of land. In a strict sense, Cadastre is a record on land, value rather than land and rights holders and for tax purposes.

According to Boedi Harsono: "Land registration is a series of activities carried out regularly and continuously to collect, process, store and present certain data regarding certain fields or lands that exist in a particular area with a specific purpose." (Harsono, 2003, p. 46). The definition of land registration according to Adrian Sutedi is: "A series of activities carried out by the State / Government continuously and regularly, in the form of gathering certain information or data concerning certain lands in certain regions, processing, storing and presenting them for the benefit of the people, in order to guarantee collateral. legal certainty in the field of land, including the issuance of proof and maintenance " (Sutedi, 2014, p. 59)

From this understanding there are several elements, among others:

- a. There is an obligation for landowners to register their land
- b. Legal certainty and legal guarantees for holders of land registering their land
- c. The existence of a land holding institution

Land registration activities, including:

- a. Physical field, namely measurement, mapping and bookkeeping that produces registration maps and measuring letters.
- b. Juridical field, namely registration of land rights, transfer of rights and registration or recording of other rights (both land rights and guarantees) and other expenses.

According to Adrian Sutedi: "Land registration is a prerequisite in an effort to organize and regulate land use, ownership, ownership and use, including to overcome various land problems. Land registration is shown to provide certainty of rights and legal protection for holders of land rights with proof of land certificates, as an instrument for structuring the ownership and ownership of land and as a controlling instrument in the use and use of land." (Harsono, 2003, 59).

Much happens in the community, this land problem is caused by the existence of someone's property, and given the many interests associated with it, it is not impossible that conflicts or clashes occur among fellow members of the community which result in criminal incidents.

This is a consequence of state recognition of the rights of a person or a legal community, the state must provide legal certainty to the ownership (land) of the community through a land

registration process that produces several types of rights such as Property Rights, Building Rights, Cultivation Rights, Rights Management, and Use Rights and other rights stipulated in Law Number 5 Year 1960 concerning Basic Regulations on Agrarian Principles hereinafter referred to as UUPA. That protection of legal certainty on land rights is an absolute requirement in the business world for the smooth flow of investment, as a manifestation of providing legal certainty in the ASEAN Economic Community.

With the issuance of Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations, State Gazette 1960-104 and Supplement to State Gazette Number 2043, concerning Regulations on Basic Agrarian Basics, starting from that time a comprehensive overhaul of the regulation of agriculture in Indonesia occurred, in order to create legal certainty through, namely:

- a. Codification and unification of agrarian law. The codification of agrarian law is that the applicable agrarian law is written and codified agrarian law, namely Law Number 5 Year 1960 and various implementing regulations. Whereas the unification of agrarian law is that there is only one applicable agrarian law, namely Law Number 5 Year 1960 and various regulations.
- b. Supremacy of agrarian law, namely the enforcement of national agrarian law against various agrarian issues. Firm, consistent and non-discriminatory law enforcement.
- c. Renewal / reform of national agrarian law, with the establishment of the LoGA, it is the basis of the renewal of agrarian law from various aspects.
- d. Eliminating the dualism and pluralism of agrarian law, with the establishment of the LoGA, there is no dualism and pluralism of agrarian law, but only one agrarian law that applies in the territory of Indonesia, namely the LoGA.

Protection of human rights to land, with the birth of the LoGA, the protection of the rights of men and women is highly protected under the LoGA. Men and women have equal opportunities to obtain land rights (Arba, 2015, p, 33).

That the Indonesian people have codified legal rules and unification, one of which is related to agrarian law, the Indonesian nation has shown readiness to compete with countries that are members of the MEA in order to resolve the problem of land registration in Indonesia so that it can provide certainty for the world efforts to increase domestic investment in the atmosphere of the ASEAN Economic Community.

2. Implementation of State Policy in Land Registration to Provide Legal-Certified Investment Climate Related to Land Problems

The state as the regional authority has the authority and is responsible for the rights to the land and its contents and is obliged to manage and regulate their use and allocation for the benefit of the community in a fair and equitable manner. The state or government determines it in a number of laws and regulations concerning land rights that can be granted in accordance with provisions in the form of property rights, building use rights and so forth.

In the UUPA there are several basic principles contained in article by article, namely, among others:

- a. The right of the nation to eternal agrarian is contained in Article 1 paragraph (1).
- b. The right to control the state over land / land is stated in the provisions of Article 2.
- c. Recognition of customary rights controlled by customary law communities over land contained in the provisions of Article 3.

- d. Provision of the rights of individuals and legal entities over land, namely that each person can be given rights to land both individually and jointly and a legal entity contained in Article 4 paragraph (1).
- e. The principle of social function for all land rights stipulated in Article 6.
- f. Arrangements regarding land reform stipulated in Articles 7 and 17, namely about the maximum and minimum land ownership limits for one family.
- g. The land principle for farmers stated in Article 10.
- h. Registration of land for legal certainty and rights for the holders stipulated in Article 19.

The further implementation of the provisions contained in the UUPA are regulated in various laws and government regulations, Presidential regulations, ministerial regulations and the head of the National Land Agency, in order to provide legal certainty for the investment climate in Indonesia related to land are as follows

- a. In the field of Forestry regulated by Law Number 5 of 1967 concerning Basic Forestry Provisions, which was replaced by Law Number 41 of 1999 concerning Forestry unto Law Number 13 of 2004 concerning Forestry, as well as various Government Regulations and Minister of Forestry Regulation
- b. In the field of Mining, it is regulated by Law Number 11 of 1967 concerning Mining and various implementing regulations, which are replaced with Law Number 4 of 2009 concerning Mining, Minerals and Coal.
- c. In the field of fisheries regulated by Law Number 16 of 1985.
- d. In the field of Irrigation is regulated by Law Number 7 of 2004 concerning Water Resources.
- e. In the field of Plantation, Law No. 18 of 2004 concerning Plantation is regulated.
- f. In the field of land reform, it is further regulated by Law Number 56 / prp of 1960 concerning Agricultural Landowners by one family, and Government Regulation Number 224 of 1961 concerning Prohibition of Absentee Agricultural Land Ownership.
- g. In the field of Flats, it is regulated in accordance with Law Number 16 of 1985 concerning Flats.
- h. In the field of Spatial Planning and Land Use, it is regulated in accordance with Law Number 24 of 1992 concerning Spatial Planning, which is replaced by Law Number 26 of 2007 concerning Spatial Planning and Government Regulation Number 16 of 2004 concerning Tata Use land.
- i. In the field of Land Registration which is regulated by Government Regulation Number 10 of 1961, which is subsequently replaced with Government Regulation Number 24 of 1997 concerning Land Registration.
- j. In the field of Underwriting Rights, it is regulated in accordance with Law Number 4 of 1996 concerning Mortgage Rights.

Land rights derived from the right to control from the state over land can be given to individuals, both Indonesian citizens and foreign nationals, a group of people together, and legal entities, both private legal entities and public legal entities. The provision of legal certainty regarding land rights for all Indonesian people, which is one of the objectives of the enactment of the UUPA can be realized through two efforts, namely:

- a. Availability of written, complete and clear legal instruments that are implemented consistently in accordance with the soul and its provisions.

- b. The implementation of land registration that allows holders of land rights to easily prove the land rights they control, and for interested parties, such as prospective buyers and prospective creditors, to obtain necessary information regarding land that is the object of legal actions to be carried out, and for the government to implement land policies.

Land registration aims to provide legal certainty known as *rechts cadaster* / legal cadaster. Guaranteed legal certainty to be realized in this land registration, including legal certainty on the status of land rights, certainty of legal subjects, and certainty of legal objects. This land registration produces a certificate as proof of his rights. The opposite of land registration that is *rechts cadaster* is *fiscal cadaster*, which is land registration which aims to determine who is obliged to pay taxes on land. This registration of land resulted in a letter of proof of payment of tax on land, which is now known as a Letter of Tax on Land and Building Taxes (PBB SSPT).

UUPA regulates land registration which aims to guarantee legal certainty. This land registration is an obligation for the government to hold land registration in the entire territory of the Republic of Indonesia regulated in Article 19 of the UUPA, namely:

- a. To guarantee legal certainty by the government, land registration is carried out in all regions of the Republic of Indonesia according to the provisions regulated by Government Regulations.
- b. The registration in paragraph 1 of this article includes:
 - 1) Measurement, mapping, and bookkeeping.
 - 2) Registration of land rights and the transfer of these rights, and
- c. The granting of proof of rights documents, which applies as a strong evidentiary tool.
- d. Land registration is held keeping in mind the state and community conditions, socio-economic traffic requirements and the possibility of implementation, according to the Minister of Agrarian considerations.
- e. In Government Regulations regulated the costs concerned with registration referred to in paragraph 1 above, provided that the people who cannot afford to be released from payment of these costs.

D. CONCLUSION

That the main factor for the law to be able to play a role in economic development for the business world in welcoming the ASEAN Economic Community (MEA) which has been in force on January 1, 2016 is whether the law is able to create "stability", "predictability" and "fairness". Included in the stability function is the legal potential to balance and provide a place for competing interests. This is as a consequence of the state's recognition of the rights of a person or a legal community, so that the state is obliged to guarantee the legal certainty of ownership (land) of the community through a process

Land Registration which produces several kinds of rights such as: (1) Property Rights; (2) Building Rights; (3) Business Use Rights; and (4) Management Rights, and Use Rights and other rights stipulated in Law Number 5 Year 1960 concerning Basic Principles of Agrarian Regulation hereinafter referred to as UUPA. That protection of legal certainty on land rights is an absolute requirement in the business world for the smooth flow of investment.

The business world needs legal certainty to be able to develop and contribute to a country. This land registration is a concrete step and implementation or obligation for the government to carry out land registration in the entire territory of the Republic of Indonesia stipulated in

Article 19 of the UUPA, which aims to provide legal certainty and legal protection known as *rechts cadaster/legal cadaster*. The guarantee of legal certainty to be realized in this land registration includes the certainty of the status of the registered rights, the certainty of the subject of rights, and the certainty of the object of rights so that this land registration produces a certificate as proof of his rights.

The conception of national land law is the conception of customary law, which is a communalistic religious conception, which allows individual land tenure with private land rights, but it also contains elements of togetherness. Laying the foundations for providing legal certainty regarding land rights for the people as a whole in order to support the business world. With the existence of legal certainty related to agrarian issues, it is hoped that it can provide investment excitement for the business world in increasing domestic investment in the atmosphere of the ASEAN Economic Community.

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